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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AK FUTURES LLC,

Plaintiff,

vs.
LEAF OF VAPE LLC, a Florida limited
liability company, and Does 1-10

Defendants.

Case No:

Related Cases:

Case No. 8:21-cv-1027-JVS-ADS
Case No. 8:21-cv-1028-JVS-ADS
Case No. 8:21-cv-1061-JVS-ADS
Case No. 8:21-cv-1154-JVS-ADS
Case No. 8:21-cv-2121-JVS-ADS

**INITIAL COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff AK Futures LLC (“AKF”), for its initial complaint against
Defendants Leaf Of Vape, LLC and Does 1-10 (together, the “**Defendants**”),
alleges as follows:

PRELIMINARY STATEMENT

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1. This action was severed from *AK Futures, LLC v. LCF Labs, et al*, *CACD Case No. 8:21-cv-02121* and so is filed as a separate action with a new complaint. *See, e.g., The Rutter Group, Federal Civil Procedure Before Trial (Nat. Ed.) at ¶¶16:159.1 and 16:163 et seq.* This action is against one of the severed Defendants and Does 1-10, and is for counterfeiting and the willful infringement of Plaintiff AKF's intellectual property rights in its popular CAKE™ brand of hemp derivative Delta-8 products ("**Cake™ branded Delta-8 products**"). Defendants are unlawfully advertising, marketing, selling, transporting and distributing unauthorized, inauthentic, and infringing products that attempt to replicate or appear identical to AKF's authentic products. Defendants' products are of unknown quality and threaten substantial, irreparable harm to AKF's brand as well as to consumers, who purchase Defendants' products wrongly believing them to have been made, tested, and lawfully manufactured by AKF.

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2. AKF is the owner and authorized seller of Cake™ branded Delta-8 products, including disposable electronic delivery systems and electronic cannabinoid liquid ("e-liquid"). Delta-8 is a hemp-derived product with less than 0.3% of the psychoactive delta-9-tetrahydrocannabinol compound and so it is permitted to be sold in interstate commerce under the 2018 Farm Bill. This was recently affirmed in *USDC-CACD Case No. 8:21-cv-01027-JVS-ADS* and a landmark decision of the Ninth Circuit, *AK Futures, LLC v. Boyd Street Distro, LLC*, 35 F.4th 682 (9th Cir.2022).

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3. The safety and efficacy of Delta-8 vaping products are regulated under the PACT Act and other rules and regulations. AKF's Cake™ brand is the top-selling brand of Delta-8 vaping goods in the United States. It is carefully tested and manufactured with scrupulous attention to legal requirements and limitations. The

1 manufacturing, sale and distribution of AKF's Cake™ branded Delta-8 products
2 requires expensive quality controls and constant input by legal counsel.

3 4. Given the popularity and consumer recognition of Cake™ branded
4 Delta-8 products, significant demand for them exists in the U.S. market.
5 Unfortunately, counterfeiters and unauthorized sellers of inauthentic goods
6 replicating AKF's Cake™ marks, its copyrighted Cake design and logos, and
7 AKF's products and packaging, are unlawfully trading on AKF's brand and the
8 goodwill AKF has developed in its designs, marks, logos, products, packaging,
9 processes and quality controls at great expense.

10 5. Defendants are part of an advanced, well-funded, international
11 network of counterfeiters and unauthorized manufacturers, importers, distributors,
12 purchasers and sellers of inauthentic Cake™ branded products (the "**Cake**
13 **Counterfeiting Network**"). This national Cake Counterfeiting Network is already
14 the subject of five related cases in this District. Already, judgments and permanent
15 injunctions have been obtained in four of the related cases -- *AK Futures LLC v*
16 *Green Buddha LLC*, Case No. 8:21-cv-01028-JVS-ADS [*Dkt 39*]; *AK Futures LLC*
17 *v Smoke Totes, LLC*, Case No. 8:21-cv-01061-JVS-ADS [*Dkt 26*]; *AK Futures*
18 *LLC v Boyd Street Distro LLC*, Case No. 8:21-cv-01027-JVS-ADS [*Dkt 58*]; and
19 *AK Futures LLC v Limitless Trading Co, LLC*, Case No. 8:21-cv-01154-JVS-ADS
20 [*Dkt 59*].

21 6. AKF's investigation has shown that the products being manufactured,
22 imported, sold, shipped and distributed by the Cake Counterfeiting Network are of
23 unknown or inferior quality to AKF's authentic product, and threaten immeasurable
24 harm to AKF's brand and customer good will. They may harm consumers, violate
25 the 0.3% limitation on psychoactive delta-9-tetrahydrocannabinol compound, and
26 associate with this lawless and dangerous behavior the fully tested and lawfully
27 manufactured Cake™ branded Delta-8 products.
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1 7. Defendants' counterfeiting activities have been so pervasive,
2 persistent, and ongoing, that they have effectively cornered the Delta-8 market for
3 Cake™ 510 Carts and Cake™ Gummies and forced AKF to temporarily close
4 production of authentic Cake™ products for these two key product lines altogether.
5 Defendants have helped flood the market with cheaper, inauthentic replicas of
6 Cake™ 510 Carts and Gummies, fraudulently labeled with bogus "Certificates of
7 Analysis", that willfully misrepresent to consumers that they are rigorously tested
8 and lawfully manufactured AKF products. Instead, they are psychoactive and have
9 not been tested or approved for human consumption.

10 8. AKF suffered and continues to suffer severe economic hardship,
11 monetary damages and irreparable harm as a result. AKF's sale of authentic
12 Cake™ branded Delta-8 products, and the financial worth of its intellectual
13 property are reduced by the Cake Counterfeiting Network of counterfeiters and
14 unauthorized manufacturers, importers and sellers of inauthentic Cake™ products.

15 9. Accordingly, AKF urgently brings this action to protect its brand and
16 consumers from counterfeit Cake™ products.

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18 **PARTIES, SUBJECT MATTER JURISDICTION AND VENUE**

19 10. Plaintiff AKF is a limited liability company organized and existing
20 under the laws of Delaware with its principal place of business in California located
21 at 1007 West Grove Avenue, Suite B, Orange, California 92865. AKF is the owner
22 and rights-holder to its Cake™ marks and related intellectual property.

23 11. Defendant Leaf of Vape, LLC is a limited liability company organized
24 under the laws of Florida. It conducts business as "Leaf of Vape" and "Huff Deep"
25 and its principal place of business is 10329 Cross Creek Boulevard, Tampa, Florida
26 33647.

1 12. Defendants Does 1-10 are unknown manufacturers, importers,
2 suppliers to, or agents of the named defendants, or are additional distributors, re-
3 sellers or retailers and are residents of, or will be present in, the State of California
4 and this Judicial District (or have transacted business in the State of California
5 during the time-period covered by this complaint) and are subject to the jurisdiction
6 of this Court. The identities and roles played by Does 1-10 are not currently
7 known. AKF will amend its complaint to include the name or names of said
8 persons or entities when that information becomes readily available.

9 13. Plaintiff is informed and believes each Defendant was the agent and
10 alter ego of the other Defendants, at all relevant times alleged herein, and
11 committed the acts or omissions described below with each of the other
12 Defendants' actual and apparent authorization, approval, ratification and direction.

13 14. This is an action for willful infringement of AKF's copyrighted design
14 logo, 17 U.S.C. § 101 *et seq.*; for federal unfair competition and false designation
15 of origin, 15 U.S.C. § 1125(a); for violations of California's false advertising law
16 (Cal. Bus. & Prof. Code § 17500 *et seq.*) and California's unfair competition law
17 (Cal. Bus. & Prof. Code § 17200 *et seq.*); and for contributory copyright
18 infringement and contributory trademark infringement. This Court has subject
19 matter jurisdiction over AKF's federal claims pursuant to 15 U.S.C. § 1121 and 28
20 U.S.C. §§ 1331 and 1338(a). Jurisdiction for the related state-law claims is based
21 upon 28 U.S.C. §§ 1338(b) and 1367. Personal jurisdiction over defendants is
22 addressed in the *Statement Of Facts* section below.

23 15. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391
24 and 1400(a). AKF has its principal place of business in this Judicial District; the
25 Ontario Facility described below is also located here; Plaintiff's damages occurred
26 here; and Leaf of Vape regularly and systematically does business here. Venue in
27 this Judicial District also is proper because a substantial part of the events giving
28 rise to the claims in this action occurred in this Judicial District.

STATEMENT OF FACTS

A. THE COMMERCIAL SUCCESS OF PLAINTIFF'S CAKE™ DELTA-8 PRODUCTS

16. AKF's Cake™ brand is recognized as the market leader in high-quality hemp-derived Delta-8 vaping products.

17. Prior to launching Cake™, AKF's co-founder James Clelland launched and operated other very successful brands in the vaping industry. An artist, designer, and experienced marketer, Clelland's interest in vaping products began with a desire to quit smoking cigarettes. By the age of 28, Clelland developed his first successful brand called "Dotmod." Dotmod's sales grew to approximately \$20 million annually utilizing Clelland's designs and logos, and grassroots or "viral" social media marketing. His passion, hard work and distinctive designs and formats contribute to the success and popularity of AKF's brands.

18. AKF launched the Cake™ branded Delta-8 products at the CHAMPS Trade Show in Orlando, Florida in October 2020. While there were other Delta-8 products at the trade show, Cake™ stood out through its appealing branding and high-quality disposable product. Demand for Cake™ products has been overwhelming. For the twelve-month period ending October 2021, revenue from sales of authentic Cake™ branded Delta-8 products in the U.S. market exceeded millions of dollars per month.

19. By virtue of Cake™'s marketplace success, AKF has established substantial and widespread consumer goodwill in the Cake™ mark, trade name, and designs. Consumers of Cake™ products associate AKF's marks and designs with high-quality, innovative and well-tested products.

20. AKF takes seriously its intellectual property rights in the Cake™ brand and actively polices them, including through anti-counterfeiting activities of the type that uncovered the sales of counterfeit products described in this Complaint.

B. AKF'S COPYRIGHTED CAKE DESIGN LOGO

21. AKF is the owner of registered copyrights for its Cake design logo in the U.S. and China.

22. AKF's Cake design logo bearing U.S. Copyright Registration No. VA 2-247-632, attached hereto as **Exhibit A**, is an original work of authorship protected by the Copyright Act. AKF is the registrant and rights holder to the copyright in this work.

23. AKF's copyrighted cake design logo bearing China Copyright Registration No. Guo Zuo Deng Zi-2021-F-00163270, attached hereto as **Exhibit B**, is an original work of authorship.

24. AKF is the registrant and rights holder to the copyright in this work:



25. AKF's copyrighted cake design logo is prominently displayed on all of AKF's authentic Cake™ products.

26. Without the consent, approval, or license of AKF, Defendants have purchased, distributed, offered for resale, and sold infringing reproductions of AKF's Cake™ branded products, including unauthorized reproductions of AKF's copyrighted cake design logo:



AKF's Copyrighted Design Logo Defendants' Unauthorized Reproductions

27. Defendants continue to engage in this unlawful conduct. These activities have infringed and are continuing to infringe a valid, federally registered copyright in AKF's work.




C. PLAINTIFF'S TRADEMARK RIGHTS, DESIGNATION OF ORIGIN AND TRADE DRESS IN CAKE™

28. AKF has also established considerable trademark rights including designation of origin and trade dress in its Cake™ design logo, stylized "Cake" lettering, and unique product packaging.

29. Without the consent, approval, or license of AKF, Defendants have purchased, distributed, offered for resale, and sold infringing reproductions of AKF's Cake™ products, including unauthorized reproductions of AKF's design logo, stylized lettering, and other indicia of origin such as product packaging and trade dress.

30. AKF has pending applications for registration of the Cake™ marks before the United States Patent and Trademark Office, for use in connection with electronic cigarettes, electronic cigarette refill liquids and cartridges, electronic cigarette batteries, and electronic cigarette chargers, including as follows:

Mark	Date of application	U.S. serial number
CAKE	DECEMBER 21, 2020	90399839 (CLASS

		034)
CAKED	MARCH 17, 2021	90584363 (CLASS 034)
CAKED8	MARCH 17, 2021	90584410 (CLASS 034)
	MARCH 22, 2021 May 2, 2021	90594523 (CLASS 034) 90686598 (Class 009)
	MARCH 22, 2021 April 5, 2021	90594382 (CLASS 034) 90624745 (Class 009)
EAT CAKE	MARCH 25, 2021	90603633 (CLASSES 009 AND 034)
	AUGUST 16, 2021	90885204 (CLASS 034)
CAKE 10 10	JUNE 29, 2021	90801941 (CLASS 034)

31. Attached hereto as **Exhibits C through J** are true and correct copies of the printouts of the Trademark Status & Document Retrieval pages for the above serial numbers.

32. AKF currently owns registrations of its “Cake” stylized trademark and design logo trademark issued by China, Mexico, Russia and Australia. AKF’s design logo trademark bears China Registration No. 55058687 and International Registration No. 1604339 with grants of protection by designee country Australia; and AKF’s “Cake” stylized trademark bears Mexico Registration No. 2574865.

33. AKF also owns pending trademark applications for registrations of its “Cake” stylized mark and design logo mark in Canada, the European Union, Hong Kong, Vietnam, Brazil, Switzerland, Columbia, Indonesia, Israel, Korea, Japan, Malaysia, Norway, New Zealand, Philippines, Singapore, and Thailand. Attached hereto as **Exhibit S** is a schedule summarizing all AKF’s Cake related trademark registrations and pending applications domestically and abroad.

34. Since no later than October 23, 2020, AKF has continuously used one or more of the marks on its products in commerce. To this day, all of AKF’s Cake™ products bear one or more of the above-mentioned marks, as illustrated by the exa



35. The Cake marks are distinctive and serve solely to identify and promote AKF’s genuine products and well-known brand.

36. AKF has spent substantial time, money, and effort in developing consumer recognition and awareness of its brand.

37. AKF sells its products through its affiliated company WM Wholesale and a carefully authorized network of Authorized Distributors.

38. Through its predecessors’ and its licensees’ widespread and substantially exclusive use of the Cake™ mark and related marks, AKF also owns

1 significant common law rights in the marks, which are not limited to the goods or
2 services for which the marks are pending registration.

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4 **D. DEFENDANTS WERE REGULAR CUSTOMERS OF PLAINTIFF**
5 **AKF AND DID REGULAR AND SYSTEMATIC BUSINESS IN**
6 **CALIFORNIA SINCE 2020.**

7 39. Leaf of Vape regularly and systematically purchased authentic Cake™
8 branded Delta-8 products from AKF beginning 2021, usually placing several
9 significant orders each month. For example, it placed orders of \$500,000 and \$1
10 million in May and June 2021, among other substantial orders thereafter. Attached
11 as **Exhibit R** are a sampling of proof of payment for such transactions. These
12 transactions and shipments were made in California, and invoices were sent from
13 California. Leaf of Vape's regular and systematic purchase transactions and supply
14 shipments wedded Leaf of Vape to the California forum. Leaf of Vape's regular,
15 systematic and repeated transactions with AKF were lawful and AKF supplied
16 authentic Cake™ branded Delta-8 products to Leaf of Vape in reliance on its
17 continuing lawful business.

18 40. Additionally, Leaf of Vape is a major national distributor and supplier
19 of numerous brands of smoke shop industry products, including Leaf of Vape's
20 own brand of Delta-8 products called "Flying Monkey". Leaf of Vape regularly
21 and systematically sells and distributes its smoke shop products, including its own
22 Flying Monkey brand Delta-8 products, into the state of California. Between
23 August 2021 and February 2022, Leaf of Vape unlawfully competed with AKF by
24 requiring its customers to purchase certain quotas of Flying Monkey Delta-8
25 products with every purchase of Cake branded Delta-8 products.

1 **THE ONTARIO FACILITY WHERE COUNTERFEITING AND**
2 **UNLAWFUL DISTRIBUTION BY DEFENDANTS BEGIN.**

3 41. Nonparties LCF Labs Inc., related individuals and affiliated entities
4 (together, “**LCF**”) operate the facility at 895 S. Rockefeller Avenue, Ontario, CA
5 91761 (the “**Ontario Facility**”). The Ontario Facility is an industrial
6 manufacturing and assembly plant, warehouse and shipment fulfillment facility. It
7 includes mixing laboratories, custom labeling and packaging machinery, and other
8 fixed assets required to mass-produce Delta-8 products like AKF’s Cake™ branded
9 products. LCF promotes itself as “one of the leaders in So-Cal for producing and
10 white labeling...e-juice.”¹

11 42. Nonparties ALD Group, Limited and Shenzhen CF Technologies Co.,
12 Ltd are corporate entities incorporated under the laws of China which conduct
13 business in the USA (together “**ALD Group**”). ALD Group manufactures
14 counterfeit Cake™ branded products and their component parts in China, sells them
15 to LCF, and ships them to the Ontario Facility. At the Ontario Facility, counterfeit
16 Cake™ branded Delta-8 products are then manufactured, assembled, inventoried,
17 packaged, distributed and shipped out to the Cake Counterfeiting Network,
18 including Defendants herein.

19 43. In May 2021, LCF CEO “**Que**” first introduced himself to AKF’s co-
20 founder James Clelland and offered to “assist” AKF with its ongoing investigation
21 of the Cake Counterfeiting Network. Between June and August of 2021, in various
22 telephone calls, texts and in-person meetings between Que and AKF’s principals,
23 Defendants offered to broker an ostensibly lucrative, multimillion-dollar inventory
24 procurement deal between AKF and ALD Group, purportedly to assist AKF in
25 meeting exploding market demand for its authentic Cake™ branded Delta-8
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27 _____
28 ¹ LCF website, available at <https://www.lcflabs.com/> (last visited Dec. 5, 2021).

1 products, and to eliminate or meaningfully curb the Cake Counterfeiting Network's
2 access to AKF's well-established consumer base.

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4 **E. DISCOVERY OF A PATTERN OF WRONGDOING AND CEASE**
5 **AND DESIST LETTERS.**

6 44. In early August 2021, AKF discovered that LCF, ALD Group and
7 Defendants secretly launched their own infringing "PIE" brand line of Delta-8
8 vaping products ("PIE"). Instead of facilitating AKF's multimillion-dollar
9 inventory procurement deal with ALD Group on behalf of AKF, as promised, LCF
10 and ALD Group quickly mass-produced -- in China and the Ontario Facility --
11 counterfeit Cake™ branded products. They recruited Defendants and fraudulently
12 palmed off PIE brand devices and packaging as AKF's "latest" affiliated spinoff
13 brand, as if they were manufactured, sponsored and endorsed by Plaintiff as a new
14 Cake™ branded Delta-8 product.

15 45. LCF, ALD Group and Defendants distributed and sold the PIE brand
16 in California and this Judicial District, supplying distros in this Judicial District in
17 particular.

18 46. In a series of letters dated August 3, 2021, AKF's counsel sternly
19 admonished LCF, Defendants and other known distributors affiliated with PIE to
20 cease and desist all unlawful, unauthorized sales and promotion of the infringing
21 PIE branded products, and to comply with a series of demands, in writing, or AKF
22 would initiate legal action against them (the "**August 3 Cease and Desist**
23 **Letters**"). True and correct copies of the August 3 Cease and Desist Letters to
24 LCF, Defendant Leaf of Vape and non-party Dr. Haze are attached hereto as
25 **Exhibit K.**

26 47. The August 3 Cease and Desist Letters were effective immediately. In
27 addition, the August 3 Cease and Desist Letter identified Plaintiff AK Futures, LLC
28 as the owner of Cake™ branded Delta-8 products. They sought among other things

1 to end Defendants' willful infringement of AKF's Cake™ branded Delta-8
2 products.

3 48. Public documents showed that Plaintiff AK Futures, LLC is located in
4 California and in particular, in this Judicial District, and Defendants had actual
5 knowledge this was the case from their previous purchase transactions and
6 shipments of authentic Cake™ branded Delta-8 products. In addition, Defendants
7 had met Plaintiff CEO James Clelland at one or more trade shows and so was well
8 aware that their counterfeit sales of PIE in California would come to his attention
9 and expose them to court action in California.

10 49. Throughout the remainder of August 2021, AKF reasonably believed
11 Defendants acquiesced with AKF's demands in the August 3 Cease and Desist
12 Letters. In September and October 2021, however, AKF and its investigators grew
13 suspicious that LCF, ALD Group and Defendants continued to manufacture,
14 market, distribute, and sell unauthorized, inauthentic counterfeit Cake™ branded
15 Delta-8 products, in willful disregard of AKF's stern admonishments and demands
16 in the August 3 Cease and Desist Letters.

17 50. For example, on several occasions in late August and early September
18 2021, several of AKF's authorized distributors independently reported to Clelland
19 that Que and LCF claimed to be the "founding owner" and manufacturer,
20 respectively, of Cake™ branded Delta-8 products. These claims were made during
21 in-person meetings and conversations with Delta-8 wholesalers and distributors at
22 tradeshow and similar events. These were fraudulent misrepresentations which
23 AKF's authorized distributors clearly witnessed and overheard while standing
24 nearby.

25 51. Then, in September or October 2021, AKF discovered LCF
26 surreptitiously and unlawfully launched the "www.cakehemp.com" website, and for
27 a period of several months, unlawfully utilized that website to actively and
28 continuously market and advertise, and presumably distribute and sell, unauthorized

1 counterfeit Cake™ branded Delta-8 products. According to the applicable domain
2 name registry, Defendants registered the www.cakehemp.com domain name
3 anonymously, but Clelland specifically recalled several lengthy and detailed
4 discussions with Defendant Que in or around June 2021 regarding
5 “www.cakehemp.com”. Specifically, during an in-person meeting and several
6 follow-up cellphone communications in June 2021, Que recommended to Clelland
7 that AKF launch a Cake™ branded website to increase sales via online marketing
8 and e-commerce. Que also suggested AKF utilize the website to post AKF’s
9 product testing results for consumers to access. Clelland declined and informed
10 Que that AKF management expressly resolved not to launch any form of Cake™
11 affiliated website and resolved instead to avoid all e-commerce and online
12 marketing for its premium authentic Cake™ brand. Instead, AKF reserved online
13 marketing of authentic Cake™ products as a privilege for certain key authorized
14 distributors only, as consideration for their services. Que encouraged Clelland to
15 reconsider, and then specifically stated, “www.cakehemp.com is available” and “it
16 is great domain.” Then he proceeded to show Clelland a mock-up of the
17 www.cakehemp.com website, which Que claimed was ready to “go live.” Clelland
18 wrote Que a stern text demanding that Que “Please take that site down
19 immediately.” When Clelland discovered the www.cakehemp.com website was
20 alive and operating in or around late September 2021 or early October 2021, AKF
21 immediately suspected Defendants actively participated in the Cake Counterfeiting
22 Network.

23 52. On September 28, 2021, AKF, through its counsel, sent another letter
24 to LCF and expressly admonished them once again: (a) that LCF and their
25 distributors were counterfeiting and willfully infringing AKF’s Cake™ branded
26 products; (2) that LCF and its distributors were not authorized by AKF to produce
27 Cake™ branded products; (3) that AKF specifically prohibited LCF and its
28 distributors from using and willfully infringing upon AKF’s intellectual property

1 for any purpose whatsoever; and (4) that LCF and its distributors must cease and
 2 desist immediately or AKF would initiate legal action against them (the
 3 “**September 28 Cease and Desist Letter**”). A true and correct copy of the
 4 September 28, 2021, Cease and Desist Letter is attached hereto as **Exhibit L**.

5 53. Plaintiff is informed and believes that all Defendants (not just LCF)
 6 had actual or constructive knowledge of the September 28 Cease and Desist Letter
 7 and their contents. The letter itself demanded that LCF inform all of its distributors
 8 or end-users, which includes defendant, of the infringement of the Cake brand and
 9 that all counterfeit products be removed from the market. Defendants had actual
 10 copies of the Letters, or at least knew the gist of the September 28 Cease and Desist
 11 Letters, including that:

12 As you know, LCF Labs, Inc. (“LCF”) and its distributors are not
 13 authorized by AKF and they **are not** affiliated in any way with authentic
 14 CAKE products. AKF recently learned LCF is promoting and selling
 15 unauthentic Cake-branded products. Please be advised AKF intends to
 16 vigorously pursue its claims against LCF and any other parties involved in
 17 manufacturing and distributing counterfeit Cake-branded products.

18 LCF's sale and distribution of the Cake-branded products constitutes
 19 trademark and trade dress infringement in violation of the Lanham Act, 15
 20 U.S.C. § 1125, et seq.; as well as unfair competition under federal and state
 21 laws. Accordingly, LCF and its affiliates now are exposed to substantial
 22 liability and damages, including but not limited to lost profits, disgorgement
 23 of profits, actual damages, and attorneys' fees, and will be referred to
 24 authorities for criminal prosecution if appropriate.

25 AKF hereby demands that you **** [i]nform all distributors and end-
 26 users who received the counterfeit Cake-branded vaping products that such
 27 products were unauthorized and infringe upon the CAKE Marks and trade
 28 dress; and [¶] [r]equest that any distributor or end-user to whom you sold or

1 otherwise conveyed counterfeit Cake-branded products remove such
2 products from the stream of commerce. (*Emphasis in original.*)

3 54. Leaf of Vape was not dissuaded, and instead expanded its
4 counterfeiting activities beyond the PIE brand. By the end of 2021, Leaf of Vape
5 had switched its purchases of **all Cake™ branded Delta-8 products** from AKF –
6 the authentic producer – to LCF the counterfeiter. Leaf of Vape knew that LCF
7 was producing counterfeit goods at the Ontario Facility because it had received the
8 August 3 Cease and Desist Letter and at least knew about the September 28 Cease
9 and Desist Letter. For example, it placed an October 7, 2021 order with LCF. This
10 was only one among many regular, systematic and repeated transactions with LCF,
11 for the purchase of goods known to be counterfeits. These transactions again
12 wedded Leaf of Vape to the California, but here with a different supplier of Cake™
13 branded Delta-8 products located in this Judicial District. As with the AKF
14 purchases, Defendants' purchases from LCF were invoiced and paid in California;
15 shipments came from the Ontario Facility in this Judicial District. Attached as
16 **Exhibit M** is a sampling of such transactions in October 2021.

17 55. Defendants are a necessary part of a national chain for distribution and
18 sale of counterfeit Cake™ branded Delta-8 products manufactured, assembled,
19 inventoried, packaged, distributed and shipped by other participants in the Cake
20 Counterfeiting Network.

21 **F. ACTIONS TAKEN TO ENFORCE CEASE AND DESIST LETTERS.**

22 56. Defendants failed to meaningfully respond in any way to the August 3
23 and September 28 Cease and Desist Letters. Having received no response from
24 Defendants, AKF attorneys caused Digital Ocean, the host of
25 [“www.cakehemp.com,”](http://www.cakehemp.com) to immediately take down the website, and AKF instructed
26 its investigators to discover additional clear and convincing evidence of
27
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1 Defendants' infringing activities, as quickly as possible, in contemplation of this
 2 lawsuit. In November 2021, AKF's investigators ultimately discovered such
 3 evidence.

4 57. Specifically, on November 4, 2021, AKF investigators successfully
 5 arranged to meet LCF CEO "**Que**" at LCF's Ontario Facility, ostensibly as
 6 businessmen, to gather evidence and information regarding the nature and scope of
 7 LCF's infringing and unlawful business activities, if possible. During their visit,
 8 AKF's investigators observed and photographed LCF's large industrial
 9 manufacturing facility, outfitted with multiple freight loading bays in the rear of the
 10 building, where several semi-trucks were parked, and a suite of executive offices at
 11 the front of the building. AKF's investigators ultimately entered Defendants' suite
 12 of executive offices and interviewed LCF CEO Que and one of Defendants'
 13 associates (the "**LCF Agent**").

14 58. Among other facts, LCF CEO Que admitted the following facts to
 15 AKF's investigators during their "meeting" and interview.

- 16 • Defendants have been manufacturing Cake™ branded Delta-8
 17 products on a continuous and ongoing basis *for the last six months*
 18 (without AKF's consent or authorization) and continue to do so today
 19 in willful disregard of AKF's intellectual property rights and stern
 20 warnings in the September 28 Cease and Desist Letters.
- 21 • Cake™ Delta-8 products were among the first Delta-8 products that
 22 Defendants started manufacturing.
- 23 • Defendants routinely manufacture and distribute counterfeit Cake™
 24 disposable devices at a rate of *125,000 units per day*.²

25
 26 ² Defendants typically charge their Authorized Distributors \$9-10 per unit
 27 pricing for such products. Thus 125,000 units per day of the Cake™ disposable
 28 devices would sell at wholesale for more than \$1 million per day.

- 1 • Defendants do not “close” or “shut down,” and have a second shift that
- 2 just started. And
- 3 • Defendants work with a company in China, shipping them the pieces,
- 4 which the Chinese company in turn assembles and ships back to
- 5 Defendants as completed product.

6 59. During their conversation, LCF CEO Que acknowledged AKF’s
7 Cake™ branded Delta-8 products have “become extremely popular” and that
8 consumers “can find [them] anywhere.” He also acknowledged Cake™ branded
9 Delta-8 products are “one of the most recognizable Delta-8 brands out there.”

10 60. In addition, AKF’s investigators spoke to the LCF Agent separately
11 during their visit to the facility. The LCF Agent expressly and independently
12 confirmed and admitted Defendants have been manufacturing unauthorized replicas
13 of AKF’s Cake™ branded disposable devices “for the last six months.”

14 61. AKF’s investigators also observed and photographed a case of Cake™
15 branded disposable pens openly displayed on the LCF Agent’s desk. AKF’s
16 investigators examined the products closely and readily determined they were
17 counterfeit replicas of AKF’s authentic Cake™ branded Delta-8 products for
18 irrefutable reasons. The inauthentic products made by Defendants also utilize
19 replicas of AKF’s Cake™ branded packaging, including reproductions of AKF’s
20 copyrighted stylized design logo and AKF’s Cake™ mark and trade dress. The
21 similarities between AKF’s authentic product and the counterfeit products sold by
22 Defendants are striking:



(Authentic Cake™ Packaging) (Packaging sold by Defendants)

62. Defendant Leaf of Vape Distro is an Addison, IL chain of “distros” and part of the Cake Counterfeiting Network. With full knowledge of its own wrongdoing –that it was purchasing counterfeit Cake™ branded Delta-8 products and the source of the counterfeits was the Ontario Facility – Leaf of Vape is invoiced from the Ontario Facility, makes payments to LCF in California, and accepts delivery of Cake counterfeits from the Ontario Facility.

63. Defendants then store and organize the counterfeit Cake™ branded Delta-8 products for sale to consumers, or re-sale to smaller “distros” in its geographic area. They add value to the Cake Counterfeiting Network because of their ability to purchase large lots of Cake™ counterfeits, and then sell them to consumers and smaller “distros” (who in turn sell to consumers in their smaller area of operations). They pay a wholesale price for the large lots of counterfeits, and then mark that price up for sale to the consumers or re-sale to smaller distros.

64. Thus, separate from the PIE counterfeit brand, Defendants continuously and systematically (i) have made regular purchases of counterfeit

1 Cake™ branded Delta-8 products produced at and shipped from the Ontario
 2 Facility; and (ii) received shipments of counterfeit items from the Ontario Facility,
 3 for sale outside of California, all since receipt of (or at least knowledge of) the
 4 August 3 and September 28 Cease and Desist Letters.³

5
 6 **E. DEFENDANTS' COUNTERFEITING DRIVES PLAINTIFF AKF'S**
 7 **LEGITIMATE PRODUCT LINES OUT OF THE MARKET.**

8 65. By merit of its actions and conduct as part of the Cake Counterfeiting
 9 Network, Defendants either directly caused each cause of action when named
 10 below; or acted as aiders and abettors of such violations of law; or acted as a co-
 11 conspirators in such violations of law, and so is jointly and severally liable for all
 12 damages from each such cause of action.

13 66. At or around the same time the AKF Investigators' report revealed the
 14 pervasiveness of Defendants' counterfeiting activities, AKF's Authorized
 15 Distributors also first reported to AKF CEO Clelland that "overnight" they were
 16 unable to sell any Cake™ 510 Carts or Cake™ Gummies in any market. According
 17 to AKF's Authorized Distributors, they could not sell Cake™ 510 Carts or Cake™
 18 Gummies expressly because wholesalers and distributors throughout the Delta-8
 19 market all reported previously purchasing their entire monthly requirements of
 20 these products from an unknown, unauthorized manufacturer(s), at much lower
 21 prices.

22 67. Currently, AKF no longer can cost-effectively manufacture Cake™
 23 Carts or Cake™ Gummies, given AKF's expensive quality control and testing
 24

25
 26 ³ Defendants charge \$10 per unit for their counterfeit Cake™ branded
 27 devices, so Defendants' illicit, unlawful counterfeiting activities generate over \$1
 28 million per day.

1 requirements. AKF stopped all production of these two product lines within the
2 past month as a result.

3 68. Based upon (a) Clelland's discovery of the www.cakehemp.com
4 website, which featured Cake™ 510 Carts prominently; (b) the AKF Investigators'
5 report, described above, wherein LCF admittedly produces over 125,000 units daily
6 of counterfeit, inauthentic, unauthorized Cake™ branded Delta-8 products; (c)
7 AKF's Authorized Distributors' reports regarding sales inability to sell *any* of
8 AKF's popular product lines, Cake™ 510 Carts and Cake™ Gummies; and (d)
9 Clelland's past recollections of events involving these Defendants, as alleged
10 herein, Plaintiff now reasonably believes LCF and Defendants manufacture, sell,
11 distribute and market to the consumer counterfeit Cake™ Delta-8 products.

12 13 **F. THE FEBRUARY 5 IMPOUNDMENT.**

14 69. On Saturday, February 5, 2002, 11 US Marshalls, assisted by 15
15 representatives of Plaintiff, successfully effectuated this Court's January 18 Seizure
16 Order [*Case No. 8:21-cv-02121, Dkt 14*] at the Ontario Facility. Working for 13
17 straight hours with a fleet of 53-foot tractor-trailers and other vehicles, the 11
18 Marshals and 15 representatives impounded 137 pallets of counterfeit Cake™
19 branded goods, containing 4.18 million items with a retail value estimated at \$51.6
20 million (the "**Impoundment Items**").

21 70. The Impoundment Items utilized replicas of AKF's Cake™ branded
22 packaging, including reproductions of AKF's copyrighted stylized design logo and
23 AKF's Cake™ mark and trade dress. In addition, the products assembled and
24 warehoused at the Ontario Facility include a number of products that Plaintiff does
25 not make, but nonetheless bear the AKF's copyrighted stylized design logo and
26 AKF's Cake™ mark and trade dress. The staggering volumes filled more than two
27 full aisles stacked in rows over 30 feet high within the Ontario Facility. The 137
28

1 pallets comprising the Impoundment Items filled 10 commercial shipping
2 containers. Most pallets contained 24,000 items.

3 71. Attached as **Exhibit N** is *Spreadsheet 1 Pallet-by-Pallet Accounting of*
4 *February 5 Impoundment Items*. According to *Spreadsheet 1*, approximately
5 4,186,874 items were seized with a retail value of \$51,697,105. *Spreadsheet 1*
6 *Pallet-by-Pallet Accounting* was prepared by Plaintiff's five-person team which
7 spent four business days making a pallet-by-pallet accounting of the February 5
8 Impoundment Items.

9 72. For the items in *Spreadsheet 1 Pallet-by-Pallet Accounting*, their
10 packaging contains Plaintiff's Cake™ copyright logo mark, trademark and trade
11 dress. Millions of paper packaging and QR labelling counterfeiting Plaintiff's
12 authentic Cake-TM copyright logo mark, trademark and trade dress were found
13 inventoried for continuing use.

14 73. *Spreadsheet 1 Pallet-by-Pallet Accounting* contains retail values for
15 authentic Cake™ products, which the counterfeit products are designed to replicate
16 and replace in sales to consumers. The values were supplied by Plaintiff's CEO
17 James Clelland, who participated in the pallet-by-pallet accounting.

18 74. Attached as **Exhibit O** is *Spreadsheet 2 Distros In National Cake*
19 *Counterfeiting Network*, there are approximately 251 "distros" that have been
20 identified by Plaintiff's national investigative efforts in the past year, including
21 Defendants. The February 5 Impoundment Items include pallets so close to
22 shipment that they were already marked with the shipping information of
23 Defendants and others.

24 75. The February 5 Impoundment Items seem typical for a manufacturing,
25 assembly, and inventory for distribution to the national Cake Counterfeiting
26 Network, including Defendants. It includes pallets ready to ship; pallets of
27 inventory that might be shipped at a later date, and manufacturing work-in-process
28 items being assembled for inventory and later shipment.

1 76. Attached as **Exhibit P** is a true and correct copy of *Spreadsheet 3*
2 *Defendants' Sales and Shipments After August 3*, which details the sales and
3 shipments after receipt of the August 3 Cease and Desist Letter. Two binders seized
4 contained detailed shipping information, usually in the form of packing slips or
5 bills of lading. They also contained invoices for particular shipments made. More
6 invoices and shipping documents were obtained from "mirror imaging"
7 Defendants' server and the 16 computers.

8 77. Attached as **Exhibit Q** is a true and correct copy of the *Cake*
9 *Inventory Lists After August 3*, which demonstrates that Defendants regularly
10 manufactured new inventory and updated their inventory lists with ever-changing
11 amounts after August 3. The inventory lists for the months of October, November
12 and December, 2021 are captured.

13 78. The similarities between AKF's authentic product and the counterfeit
14 products seized at the February 5 Impoundment are striking. These include the
15 following.

16 79. **Cake "New" 2-gram Devices**, but there is no such product made by
17 Plaintiff. Nonetheless, AKF's copyrighted stylized design logo and AKF's Cake™
18 mark and trade dress are used in Defendants' Cake "New" 2-gram Devices.

19 80. **Cake XL**, but there is no such product made by Plaintiff. Plaintiff
20 stopped manufacturing Cake XL over one year ago because of counterfeiting.
21 Nonetheless, AKF's copyrighted stylized design logo and AKF's Cake™ mark and
22 trade dress are used in Defendants' CAKE XL product line.

23 81. **Nicotine-based Products**, even though Plaintiff does not produce
24 nicotine-based products. LCF CEO Que is on the FDA Anti-Nicotine Watch List
25 and subject to the prohibitions in the FDA Anti-Nicotine Watch List Letter.
26 Nonetheless, LCF and Defendants manufacture and sell a line of nicotine-based
27 products that use AKF's copyrighted stylized design logo and AKF's Cake™ mark
28 and trade dress.

1 82. **Delta-8 Products Containing Abundant Delta-9 THC Chemicals,**
 2 despite federal standards that strictly control psychoactive Delta-9 THC chemicals
 3 and require them to be less than 0.03% of any Delta-8 vaping product. Plaintiff
 4 AKF has become a #1 best-seller by following strict federal requirements and
 5 utilizing comprehensive and expensive quality control standards and methods to do
 6 so. Testing in the past has confirmed that LCF and Defendants' Delta-8 product
 7 line contains abundant Delta-9 THC psychoactive chemicals and is likely marketed
 8 to children.

9 83. **Bogus Bar Codes.** Further, LCF and Defendants' Delta-8 products are
 10 labeled with bar codes that purport to link to testing results posted on a bogus
 11 "cakehemp.com" website which no longer exists. The bar code reference is meant
 12 to assure the consumer that test results show Delta-9 THC chemicals below federal
 13 standards; here they link to a website that does not exist. AKF's copyrighted
 14 stylized design logo and AKF's Cake™ mark and trade dress are used in
 15 Defendants' Delta-8 products containing abundant Delta-9 THC chemicals.

16 84. The February 5 Impoundment also seized a cache of business records,
 17 invoices, digital information and digital devices relevant to the Impoundment Items.
 18 The business records confirm that (i) LCF and Defendants in fact regularly and
 19 systematically manufactured, marketed, distributed, and sold unauthorized replicas
 20 of AKF's Cake™ branded disposable devices and other goods; (ii) LCF and
 21 Defendants actively participate in the national Cake Counterfeiting Network, which
 22 appears to depend on the Ontario Facility as well as ALD Group in China; (iii) LCF
 23 and Defendants are acting in concert with parties this Court has already enjoined
 24 and in contempt of its court orders in related cases; and (iv) the national Cake
 25 Counterfeiting Network is active at least in California, Texas, Florida, Ohio, New
 26 Jersey, Florida and China.

27 85. Business records, invoices, digital information and digital devices
 28 seized at the February 5 Impoundment also confirm the following facts.

1 86. First, LCF and Defendants have been manufacturing and selling
2 Cake™ branded products on a continuous and ongoing basis for at least 10 months,
3 and they continued to do so through February 5, 2022.

4 87. Second, LCF and Defendants act in willful disregard of AKF's
5 intellectual property rights and stern warnings that they have no authority to use
6 AKF's copyrighted stylized design logo and AKF's Cake™ mark and trade dress.
7 This was explained in multiple Cease & Desist Letters.

8 88. Third, LCF and Defendants' unauthorized, inauthentic counterfeit
9 Cake™ branded Delta-8 products appear to be the only Delta-8 products LCF and
10 Defendants have ever distributed and sold in interstate commerce since abandoning
11 sale of authentic Cake™ branded Delta-8 products. In other words, 100% of LCF
12 and Defendants' sales of Cake™ branded Delta-8 products unlawfully infringe
13 Plaintiff's intellectual property rights.

14 89. Fourth, evidence indicates that LCF and Defendants continuously and
15 regularly manufacture, distribute and sell counterfeit Cake™ disposable devices at
16 a rate of at least 125,000 units per day. The 125,000 units of the Cake™ disposable
17 devices generates over \$1 million per day.

18 90. Fifth, LCF and Defendants have been given written notice of this
19 Court's judgments and injunctions against counterfeiting by defendants Boyd Street
20 Distro, Smoke Totes and Green Buddha, among others. Nonetheless, business
21 records, invoices and digital information show that LCF and Defendants supplied at
22 least some of these enjoined parties after the date of written notice with counterfeit
23 goods.

24 91. And sixth, since the February 5 Impoundment, Plaintiff's sales have
25 skyrocketed. The 75% increase in year-over-year sales could have no possible
26 explanation, other than that the February 5 Impoundment dried up the supply of
27 counterfeit goods and drove retail outlets in the Cake Counterfeiting Network to
28 buy the more expensive authentic Cake™ branded goods. Plaintiff recognizes a

1 substantial number of new purchasers since the February 5 Impoundment that were
2 long suspected of belonging to the Cake Counterfeiting Network.

3
4 **H. CONSUMER CONFUSION AND HARM CAUSED BY**
5 **COUNTERFEITS.**

6 92. LCF and Defendants, as part of the Cake Counterfeiting Network, are
7 actively participated in manufacturing, importing, assembling, inventorying,
8 packaging, distributing, shipping, advertising, marketing, offering to sell, and have
9 sold, shipped and distributed large volumes of vaping products that bear
10 confusingly similar imitations of the Cake™ marks. Defendants also falsely hold
11 themselves out as an "authorized distributor" of authentic Cake™ branded Delta-8
12 products, and have either manufactured, distributed, shipped or sold substantial
13 volumes of unauthorized Cake™ branded Delta-8 products in interstate commerce
14 since May 2021.

15 93. AKF has not authorized any of LCF or Defendants to manufacture,
16 import, assemble, inventory, package, distribute, ship, advertise, market, offer to
17 sell, or to sell, ship and distribute sell any Cake™ products or any products bearing
18 the Cake™ logo marks, unregistered trademarks, trade dress or similar designation
19 of origin. AKF also has not granted any of Defendants a license to use any of the
20 Cake™ marks.

21 94. Many of Defendants' infringing products utilize fake "Cake™"
22 branded stickers with bar codes. Through these activities, Defendants are
23 intentionally deceiving customers into believing that they are receiving authentic
24 Cake™ branded Delta-8 products developed, manufactured, quality controlled,
25 screened and tested by AKF:

26
27 //

28 //



**Authentic Cake™ Products Unauthorized Cake “COA”
Stickers Linked to Cakehemp.com via Barcodes.**

95. In addition to being inauthentic, the quality, performance, and safety of Defendants’ products are unknown. AKF regularly tests its products for potency, which is part of AKF’s expensive quality control system. It also periodically conducts full panel testing for pesticides and other contaminants. AKF is unable to screen or test Defendants’ products before they reach consumers. The inauthentic products are not subject to AKF’s quality control standards. They may be made or assembled using unknown or unsafe products or components, causing harm to consumers and those around them.

96. Consumers are harmed by Defendants’ unlawful conduct because they receive inauthentic products, which are at risk of being of lower quality, less reliable, and less safe than the high-quality, genuine Cake™ branded Delta-8 products they expect.

97. Consumers and the public are likely to associate any negative or unsafe qualities of these inauthentic products with AKF and the Cake™ marks. These negative associations cause irreparable harm to AKF and damage the reputation of the Cake™ brand, in which AKF has invested heavily.

1 98. Defendants’ distribution and sales of infringing product also deprive
2 AKF of revenue and profits from sales of its authentic Cake™ branded Delta-8
3 products.

4 99. AKF has not authorized Defendants to manufacture, advertise,
5 distribute, or sell any Cake™ products or any products bearing the Cake™ marks.
6 AKF also has not granted Defendants a license to use the Cake™ marks.

7
8 **I. PERSONAL JURISDICTION FACTS: LEAF OF VAPE “MINIMUM**
9 **CONTACTS” WITH CALIFORNIA AND ITS KNOWLEDGE THAT**
10 **PLAINTIFF’S DAMAGED ARE HERE IN CALIFORNIA.**

11 100. Defendant Leaf of Vape has both “systematic and regular contacts”
12 with California necessary for general personal jurisdiction, as well as the
13 “minimum contacts” with California sufficient to establish personal jurisdiction
14 over Defendants and this dispute.

15 101. Defendants’ “systematic and regular contacts” began in 2021 with bi-
16 weekly purchases of authentic Cake™ branded Delta-8 products from Plaintiff.
17 These purchases were in substantial volumes totaling over \$1 million per month
18 and involved bi-weekly transactions in California. Leaf of Vape purchased
19 authentic Cake™ branded Delta-8 products from AKF. It placed orders of more
20 \$1.5 million in May and June 2021, among other substantial purchases. **Exhibit R.**

21 102. Defendants’ “systematic and regular contacts” continued as it switched
22 its allegiance from Plaintiff as its supplier of Cake™ branded Delta-8 products, to
23 LCF with whom it jointly produced, distributed and sold infringing PIE products.
24 The PIE products were not only produced in this Judicial District, but they were
25 sold here to Boyd Street Distro, among other customers in this Judicial District.

26 103. Defendants’ “systematic and regular contacts” continued through its
27 regular purchases of counterfeit Cake™ branded Delta-8 products from the Ontario
28 Facility.

1 108. Without the consent, approval, or license of AKF, Defendants have
2 manufactured, distributed, offered for sale, and sold infringing reproductions of
3 AKF's Cake™ products, including unauthorized reproductions of AKF's
4 copyrighted cake design logo. These activities have infringed and are continuing to
5 infringe valid, federally registered copyright in AKF's work.

6 109. By merit of its actions and conduct, and as part of the Cake
7 Counterfeiting Network, each Defendant either directly caused each cause of
8 action; or acted as an aider and abettor of such violations of law; or acted as a co-
9 conspirator in such violations of law, and so is jointly and severally liable for all
10 damages from each such cause of action.

11 110. The activities of Defendants have caused and continue to cause
12 substantial injury to AKF, including irreparable harm for which there is no adequate
13 remedy.

14 111. Defendants' infringing activities were willful and performed in
15 conscious disregard of AKF's rights.

16
17 **SECOND CLAIM FOR RELIEF**

18 **(Federal Unfair Competition And False Designation Of Origin,**
19 **15 U.S.C. 1125(A), Against All Defendants)**

20 112. AKF incorporates the allegations in paragraphs 1 through 110 above,
21 as if set forth fully herein.

22 113. Defendants' advertising, offering for sale, and sale of counterfeit or
23 unauthorized Cake™ products bearing the Cake™ marks constitute false
24 designations of origin and false descriptions and representations, and are likely to
25 cause confusion, mistake, and to deceive consumers by creating the false
26 impression that AKF and the Cake™ products are affiliated, connected, or
27
28

1 associated with Defendants or their goods, or that Defendants' products are
2 approved, licensed, endorsed, or sponsored by AKF.

3 114. Defendants' acts constitute the use of a false designation of origin, a
4 false description, and a false representation that Defendants' goods are AKF's, are
5 identical to or interchangeable with AKF's goods, or are in some way approved,
6 sponsored, authorized by, or affiliated with AKF.

7 115. With full knowledge of such falsity, Defendants have manufactured,
8 assembled, advertised, offered for sale or sold (and continue to do so) such
9 merchandise in interstate commerce, in such manner as to cause confusion or
10 mistake among the public and to deceive the public, resulting in Defendants' profit
11 and causing AKF great damage and injury. Defendants' acts constitute deliberate
12 and intentional violations of Section 43 of the Lanham Act, and justify an award of
13 trebled damages.

14 116. By merit of its actions and conduct, and as part of the Cake
15 Counterfeiting Network, each Defendant either directly caused each cause of
16 action; or acted as an aider and abettor of such violations of law; or acted as a co-
17 conspirator in such violations of law, and so is jointly and severally liable for all
18 damages from each such cause of action.

19 117. Defendants' above-described conduct is causing irreparable harm to
20 AKF and the Cake™ brand, for which there is no adequate remedy at law.

21
22 **THIRD CLAIM FOR RELIEF**

23 **(California False Advertising, Cal. Bus. & Prof. Code § 17500,**
24 **Against All Defendants)**

25 118. AKF incorporates the allegations in paragraphs 1 through 116 above as
26 if set forth fully herein.
27
28

1 119. Defendants have knowingly and willfully made false or misleading
2 statements in connection with the sale of their inauthentic products.

3 120. In advertising and promoting their products, Defendants knew or, with
4 the exercise of reasonable care, should have known, that their statements were false
5 and misleading.

6 121. By merit of its actions and conduct as part of the Cake Counterfeiting
7 Network, each Defendant either directly caused each cause of action; or acted as an
8 aider and abettor of such violations of law; or acted as a co-conspirator in such
9 violations of law, and so is jointly and severally liable for all damages from each
10 such cause of action.

11 122. As a direct, proximate, and foreseeable result of Defendants making
12 these false and misleading statements, AKF has suffered, and will continue to
13 suffer, irreparable harm to its individual brand, reputation and goodwill. AKF has
14 no adequate remedy at law to compensate for these substantial injuries and is thus
15 entitled to injunctive relief.

16 123. As a direct, proximate, and foreseeable result of Defendants making
17 these false and misleading statements, AKF has suffered and will continue to suffer
18 money damages in an amount to be proven at trial.

19 124. This cause of action enforces one or more important rights affecting
20 the public interest and confers a significant benefit on the general public, or at least
21 the large class of persons interested in Delta-8 products, and so Plaintiff AKF is
22 entitled to an attorney's fee award under CCP § 1021.5.

23 //

24 //

1 **FOURTH CLAIM FOR RELIEF**

2 **(California Unfair Competition, Cal. Bus. & Prof. Code § 17200 *et seq.*,**
3 **Against All Defendants)**

4 125. AKF incorporates the allegations in paragraphs 1 through 123 above,
5 as if set forth fully herein.

6 126. As stated above, Defendants' conduct is likely to cause confusion as to
7 the origin, authorization, authenticity, and sponsorship of the vaping products being
8 manufactured, imported, advertised, sold, and distributed by Defendants. The
9 above-described conduct of Defendants is intended to produce and has produced
10 substantial profits for Defendants at the expense of AKF and to the detriment of the
11 integrity of the Cake™ brand.

12 127. By merit of its actions and conduct, and as part of the Cake
13 Counterfeiting Network, each Defendant either directly caused each cause of
14 action; or acted as an aider and abettor of such violations of law; or acted as a co-
15 conspirator in such violations of law, and so is jointly and severally liable for all
16 damages from each such cause of action.

17 128. Defendants' above-described conduct constitutes unlawful, unfair and
18 fraudulent business practices in violation of California Business & Professions
19 Code sections 17200 *et seq.*

20 129. AKF has lost money and suffered substantial injury as a result of
21 Defendants' wrongful acts. Defendants' misconduct also has caused, and is
22 continuing to cause, irreparable injury to AKF for which there is no adequate
23 remedy at law.

24 130. This cause of action enforces one or more important rights affecting
25 the public interest and confers a significant benefit on the general public, or at least
26 the large class of persons interested in Delta-8 products, and so Plaintiff AKF is
27 entitled to an attorney's fee award under CCP § 1021.5.
28

FIFTH CLAIM FOR RELIEF

**(Contributory Copyright Infringement, 17 U.S.C. § 101 et seq.,
Against All Defendants)**

131. AKF incorporates the allegations in paragraphs 1 through 129 above as if set forth fully herein.

132. Each Defendant knew or had reason to know of the infringing activity of direct infringers LCF Labs, HomeSun, Que and ALD Group.

133. Each Defendant intentionally and materially contributed to the direct infringers' infringing activity.

134. The activities of Defendants described above have caused and continue to cause substantial injury to AKF, including irreparable harm for which there is no adequate remedy.

135. Defendants' infringing activities were willful and performed in conscious disregard of AKF's rights.

SIXTH CLAIM FOR RELIEF

**(Contributory False Designation Of Origin, 15 U.S.C. 1125(A),
Against All Defendants)**

136. AKF incorporates the allegations in paragraphs 1 through 134 above, as if set forth fully herein.

137. Each Defendant supplied goods or services to direct infringers LCF Labs, HomeSun, Que and ALD Group.

138. Direct infringers used Defendant's goods or services to infringe in their false designations of origin and false descriptions and representations which are likely to cause confusion, mistake, and to deceive consumers by creating the false impression that AKF and the Cake™ products are affiliated, connected, or

1 associated with them, or that the direct infringer's products are approved, licensed,
2 endorsed, or sponsored by AKF.

3 139. Each Defendant knew or had reason to know that direct infringers
4 would use its goods or services to infringe the plaintiff's trademark logo or to make
5 a false designation of origin.

6 140. Each Defendant had direct control and monitoring of the goods or
7 services used by the direct infringer to accomplish its infringement.

8 141. Each Defendant's above-described conduct is causing irreparable harm
9 to AKF and the Cake™ brand, for which there is no adequate remedy at law.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests that the Court enter judgment and other
13 relief in its favor and against Defendants as follows:

14 **A.** That Defendants, their officers, directors, agents, employees,
15 representatives and all persons, firms and corporations in active concert or
16 participation with any of them, be preliminarily and permanently enjoined from
17 counterfeiting, infringing, distributing, or otherwise using without AKF's
18 authorization the Cake™ marks and any AKF's copyrighted designs, by
19 manufacturing or causing to be manufactured, importing or causing to be imported,
20 reproducing or causing to be reproduced, purchasing or causing to be purchased,
21 distributing or causing to be distributed, advertising or causing to be advertised, or
22 offering for sale or selling, any counterfeit or infringing products bearing the
23 Cake™ marks, or any confusingly similar mark;

24 **B.** Judgment in favor of AKF that Defendants infringed AKF's copyright
25 rights under 17 U.S.C. § 101 *et seq.*;

26 **C.** Judgment in favor of AKF that Defendants competed unfairly with
27 AKF and employed false designations of origin including product packaging and
28

1 trade dress, all in violation of AKF's rights under 15 U.S.C. § 1125 and California
2 Bus. & Prof. Code § 17200;

3 **D.** Judgment in favor of AKF that Defendants (other than ALD, Shenzhen
4 CF Technologies and Mothership) made false and misleading statements and
5 falsely and misleadingly advertised their counterfeit products, in violation of AKF's
6 rights under California Bus. & Prof. Code § 17500;

7 **E.** On the First Claim for Relief, AKF be awarded statutory damages for
8 infringement of its registered copyright of up to \$150,000 for willful infringement
9 pursuant to 17 U.S.C. § 504(c) or, at AKF's election, an award of its actual
10 damages incurred, including all profits of Defendants obtained in connection with
11 their infringing activities, or in the alternative;

12 **F.** On the Second Claim for Relief, Defendants be ordered, pursuant to
13 Section 34 of the Trademark Act, 15 U.S.C. § 1116, to file with the Court and serve
14 upon AKF's counsel, within 30 days of the entry of the injunctions and orders
15 prayed for herein, a written report setting forth under oath and in detail the manner
16 in which they have complied with the injunctions and orders requested herein;

17 **G.** On the Second Claim for Relief, AKF be awarded up to three times the
18 amount of actual damages sustained by it as a result of Defendants' acts, including
19 any lost profits sustained by AKF or profits unlawfully realized by Defendants;

20 **H.** On all claims for relief, (i) Defendants be required to deliver
21 immediately to AKF for destruction all counterfeit or infringing merchandise
22 bearing the Cake™ marks, or any confusingly similar mark or designation of
23 origin; and (ii) the seizure and impoundment of the same as may be authorized by
24 Section 34 of the Trademark Act [15 U.S.C. § 1116(d)(2) to (11)], 17 USC § 503 of
25 the Copyright Act, Federal Rules Of Civil Procedure 64 and 65, and other relevant
26 court rules or statutes;

27 **I.** On all claims for relief, (i) Defendants further be required to deliver to
28 AKF for destruction all computer files, digital files, computer discs, master copies,

1 print molds, dye cuts or other materials or instrumentalities used to manufacture
2 counterfeit or infringing merchandise bearing the Cake™, as well as all labels,
3 signs, prints, packages, receptacles, promotional and other material in their
4 possession, custody or control that display or promote counterfeit or infringing
5 merchandise bearing the Cake™ marks, or any confusingly similar mark or
6 designation of origin; and (ii) the seizure and impoundment of the same as may be
7 authorized by Section 34 of the Trademark Act [15 U.S.C. § 1116(d)(2) to (11)], 17
8 USC § 503 of the Copyright Act, Federal Rules Of Civil Procedure 64 and 65, and
9 other relevant court rules or statutes;

10 **J.** On all claims for relief, Defendants be ordered to provide an
11 accounting of all revenues and profits obtained by them as a result of their
12 counterfeiting, copyright infringement, unfair competition and other violations, as
13 alleged herein;

14 **K.** On the First and Second Claims for Relief, AKF be awarded its
15 attorneys' fees and costs pursuant to 15 U.S.C. § 1117 and 17 U.S.C. § 505;

16 **L.** On the Third and Fourth Claims For Relief, AKF be awarded its
17 attorneys' fees as private attorney general pursuant to CCP §1021.5;

18 **M.** On the Third and Fourth Claims for Relief, the Court grant restitution
19 to AKF, including the disgorgement of all monies obtained by Defendants through
20 the unlawful sales or distribution of counterfeit, unauthorized or infringing goods;

21 **N.** On the Fifth Claim for Relief, AKF be awarded statutory damages for
22 infringement of its registered copyright of up to \$150,000 for willful infringement
23 pursuant to 17 U.S.C. § 504(c) or, at AKF's election, an award of its actual
24 damages incurred, including all profits of Defendants obtained in connection with
25 their infringing activities, or in the alternative;

26 **O.** On the Sixth Claim for Relief, Defendants be ordered, pursuant to
27 Section 34 of the Trademark Act, 15 U.S.C. § 1116, to file with the Court and serve
28 upon AKF's counsel, within 30 days of the entry of the injunctions and orders

1 prayed for herein, a written report setting forth under oath and in detail the manner
2 in which they have complied with the injunctions and orders requested herein;

3 **P.** On the Sixth Claim for Relief, AKF be awarded up to three times the
4 amount of actual damages sustained by it as a result of Defendants' acts, including
5 any lost profits sustained by AKF or profits unlawfully realized by Defendants; and

6 **Q.** Such other and further relief the Court deems just and proper.
7

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, AKF
10 demands trial by jury against all Defendants and on all issues raised herein.
11

12
13 **THE FROST FIRM**

14 Thomas C. Frost, Esq. (185187)

Jonathan Stein, Esq. (123894)

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15 DATED: February 21, 2023

16 /s/ Thomas C. Frost, Esq.

17 THOMAS C. FROST, ESQ.

18 *Attorneys for Plaintiff AK Futures LLC*
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